

DO

FR-4915-01-P

SURFACE TRANSPORTATION BOARD

[STB Finance Docket No. 36111]

David L. Durbano—Continuance in Control Exemption—Texas & Eastern Railroad,
LLC

David L. Durbano (Durbano), a noncarrier, has filed a verified notice of exemption pursuant to 49 C.F.R. § 1180.2(d)(2) to continue in control of Texas & Eastern Railroad, LLC (T&ER), upon T&ER's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 36110, Texas & Eastern Railroad, LLC—Change in Operator Exemption—Texas State Railroad Authority. In that proceeding, T&ER seeks an exemption under 49 C.F.R. § 1150.31 to assume operations over approximately 27 miles of rail line, between Rusk and Palestine, in Anderson and Cherokee Counties, Tex.

The earliest this transaction can be consummated is May 3, 2017, the effective date of the exemption (30 days after the verified notice was filed). Durbano states that he intends to consummate the transaction on or shortly after May 3, 2017.

Durbano will continue in control of T&ER upon T&ER's becoming a Class III rail carrier, and remains in control of Class III carriers Southwestern Railroad, Inc., Cimarron Valley Railroad, L.C., Clarkdale Arizona Central Railroad, L.C., Wyoming and Colorado Railroad Company, Inc., and Saratoga Railroad, LLC.

Durbano certifies that: (1) the rail lines to be operated by T&ER do not connect with any other railroads in the Durbano corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Durbano corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than April 26, 2017 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36111, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., NW, Suite 300, Washington, DC 20037.

Board decisions and notices are available on our website at “WWW.STB.GOV.”

Decided: April 14, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.